

**METROPOLITAN NASHVILLE-DAVIDSON COUNTY
TRANSPORTATION LICENSING COMMISSION**

Minutes of

September 25, 2007

The Metropolitan Nashville-Davidson County Transportation Licensing Commission (the "Commission") met in regular session on this date at the Metropolitan Courthouse. The Commissioners present were Chair Helen Rogers, and Commissioners Jennifer Brundige, Kim Thompson and Tom Turner (4). Also attending were Metro Legal advisor Jon Michael; Commission staff members Milton Bowling, Walter Lawhorn and Lisa Steelman; and Brian McQuiston, Director-Executive Secretary to the Commission.

Chair Helen Rogers called the meeting to order and led the Pledge of Allegiance. She read the Notice of Appeal statement, advising of the right to appeal decisions of the Transportation Licensing Commission.

PUBLIC HEARING: NEW WRECKER RULE – NONCONSENT TOWING FROM PRIVATE PROPERTY

Director McQuiston noted that this issue was continued from the August meeting. He stated that concerns raised at the August public hearing had been addressed, and that a revised rule had been mailed to all companies licensed to perform nonconsent towing. He discussed specific issues raised at the August meeting, then read and explained the new proposed rule:

Rule 24. NONCONSENT TOWING FROM PRIVATE PROPERTY

Prior to towing a vehicle (or personal property) from private property without the vehicle (or personal property) owner's consent, the towing company must have express written authorization for towing of that vehicle (or personal property) from the owner of the private property or designated agent. When an individual is designated by a private property owner to act as an agent to authorize towing from the property, such designation must be in writing and signed. There shall be some relationship between the private property owner and the designated agent, and there may be no relationship between the designated agent and the towing company. Contracts or written agreements between a towing company and private property owners for nonconsent towing must be retained by the towing company, and must include the property owner's signature and the signature(s) of any agent(s) designated by the private property owner. The towing company must make these documents available for inspection by the commission or any designated representative at any time. Maximum allowable rates for nonconsent towing from private property will be as specified in Section 6.80.550(H) of the Metropolitan Code of Laws.

Chair Helen Rogers asked for public comment.

Randy Bailey, of Bailey's Wrecker Service, expressed concern about requests received for

towing from businesses with which a towing company had no prior agreements, and how a towing company would know that the person authorizing the tow was the property owner. Director McQuiston cited the requirements in the state law, TCA 55-16-112; if no agent had been designated, then written authorization to tow must be from the private property owner. Mark Wayman, owner of Able Towing, stated that contracts were no longer useful. He noted that companies had used contracts before, to tow from lots after business hours. Director McQuiston stated that contracts with private property owners were not sufficient to authorize "blanket" towing. He acknowledged that a contract might simply give a towing company preferred status to tow from the property. The director stated that legal a signature for each vehicle to be towed was still a requirement, and that this may be a hazard to the towing business; but he asserted that the recent amendment to the state law had provided more signature options to private property owners. The burden had always been on the towing company to ensure that the authorizations were legal. Mr. Wayman also expressed concern that employee/agent turnover was very high for some private property owners.

Earl Garvin, owner of Easy Towing, asked about how corporations would be treated. Director McQuiston explained that the state law still required express written authorization from the private property owners or their designated agents. Mr. Garvin noted that there would be problems attempting to verify ownership of the private property.

Larry Boggs, manager of West Nashville Wrecker Service, stated that his company had been working with private property owners since March, including contracts with designated agents. He stated that he had no experience with other businesses, but that it had worked well with apartment complexes. He noted that they limited the number of designated agents to five, to avoid questions of identification. He stated that it was not a perfect system, but that it was a good step.

Mark Wayman noted that an issue brought before the Commission concerning City Towing might not have become a problem if the contracts had designated an authorized agent.

There was no other public comment.

Commissioner Jennifer Brundige stated that the rule should be clarified by adding the words "by the private property owner" at the end of the second sentence. She moved to approve the proposed rule, with that amendment. **Commissioner Kim Thompson** seconded, and the motion was passed (3-0).

PUBLIC HEARING: NEW HORSE DRAWN CARRIAGE RULE – CESSATION OF OPERATIONS UNDER ADVERSE TEMPERATURE CONDITIONS

Chair Helen Rogers noted that a new rule related to the cessation of carriage operation under adverse weather conditions had been proposed, as follows:

Rule 4. CESSATION OF OPERATIONS FOR ADVERSE TEMPERATURE CONDITIONS

Carriage operations may not be conducted when temperatures are below 35 degrees Fahrenheit or above 90 degrees Fahrenheit. Exceptions to this Rule may be granted by the Director, on a case-by-case basis, for special events only.

Chair Rogers invited public comment.

Sara Williams, owner of Cumberland Carriage Tours, stated that ninety-one degrees was fair, but that humidity should be considered. Taking temperatures of the horses while operating would be inappropriate, but with adequate water and normal humidity at roughly thirty percent, ninety-five degrees was still reasonable for carriage operations. She noted that lack

of shade and heat on the pavement downtown should be a consideration. She added that thirty-five degrees as a minimum temperature was reasonable. **Commissioner Tom Turner** asked if a combination of temperature and humidity should be considered. Ms. Williams stated that it could be considered, but that the condition of each horse could also be a factor. Johnny Smith, owner of Sugar Creek Carriages, stated that the maximum allowable temperature should be ninety-five degrees. He provided copies of an article published by an equine veterinarian that recommended a working standard which combined temperature and humidity. **Chair Rogers** expressed concern that, while local temperature is relatively easy to monitor, humidity information may not be available. Mr. Smith agreed, and explained that was the reason that he had recommended ninety-five degrees as the upper limit. He added that he had extensive experience operating carriages in Alaska, and that low temperatures would not be a factor for horses. He stated that low temperatures would affect passengers and drivers, and he recommended twenty-seven degrees as a lower limit.

Lee Cagle, of Forever Yours Carriage Service, stated that he was concerned with safety. **Chair Rogers** asked if he thought ninety-five degrees as a maximum and twenty-seven as a minimum would be appropriate. Mr. Cagle responded that ninety-five would be acceptable, but that he would not operate at twenty-seven degrees and there would be no business if it were that cold.

Sara Williams stated that the TDOT 511 telephone number provides current temperature information. **Commissioner Kim Thompson** stated that a single source of that information was needed.

There was no other public comment.

Commissioner Turner moved to approve a new rule, as follows:

Rule 4. CESSATION OF OPERATIONS FOR ADVERSE TEMPERATURE CONDITIONS

Carriage operations may not be conducted when temperatures are below 32 degrees Fahrenheit or above 95 degrees Fahrenheit, as reported by TDOT 511. Exceptions to this Rule may be granted by the Director, on a case-by-case basis, for special events only.

Commissioner Thompson seconded, and the motion passed (3-0).

SHOW CAUSE HEARING: DIAMOND TAXI

Roy Gillespie, owner of Diamond Taxi, had arrived late and appeared before the Commission. **Chair Helen Rogers** stated that the reason for the show cause hearing was that Diamond Taxi was out of compliance with the following requirements.

Section 6.72.220.B of the Metropolitan Code of Laws: “Holders of certificates of public convenience and necessity shall maintain a fixed, central place of business within the metropolitan government area and keep the same open twenty-four hours a day for the purpose of receiving calls and dispatching cabs.”

(Taxicabs) Rule 8 of the Rules and Procedures of the Transportation Licensing Commission: “The following equipment shall be in all new, existing and replacement vehicles: ... Two-way radios.”

Chair Rogers asked Mr. Gillespie if he was in compliance with these requirements. Mr. Gillespie responded that he had a central place of business, at 1200 Buchanan. He stated that he had been renting the building for two months. He stated that he transferred the telephone at night. He stated that he did not currently have two-way radios, but had just contracted for them. He stated that he considered cell phones as appropriate for dispatching,

with only sixteen cabs in the company. He stated that radios would not provide any better service, adding that at night he might have only one cab in service.

Director McQuiston stated that concerns about taxi company control and accountability for vehicles and drivers had been raised at the show cause hearing for United Cab in May 2007, when management asserted that the company had no control over its drivers and vehicles because dispatchers could operate a separate "business within a business". The director cited Inspector Lawhorn's comment that the widespread use of cell phones made this possible; two-way radios allowed all drivers to hear a call, but cell phones allowed each driver to operate independently from the company. **Chair Rogers** noted that the two-way radio was also a standard of the industry. Director McQuiston stated that the introduction of new dispatching technologies in some companies had prompted a broader discussion of dispatching, and that the Commission had held public hearings in July and August to determine if changes to current requirements were appropriate. He noted that the July hearing had resulted in the Commission decision to direct Diamond Taxi to appear for the show cause hearing. He added that he had also called a meeting of company owners to determine any specific changes that may be needed to the ordinance or rules, and that the response had been to enforce current requirements before considering any changes.

Director McQuiston stated that the Commission office had never been notified of the 1200 Buchanan address. He noted that 1110 Walsh Street had been the Diamond Taxi address for many years. He reported that Mr. Gillespie had stopped receiving mail at that address, and later had provided a new address of 1403 Clay Street. He repeated that the Commission had not been informed, and therefore had no opportunity to inspect the 1200 Buchanan business. Inspector Lawhorn stated that, during the investigation into the United Cab incident, United Cab management had complained about the lack of radios at Diamond Taxi. In addition, the Commission had received a complaint from nine Diamond Taxi owner-operators about the lack of radios. Director McQuiston noted that copies of these complaints had been provided to the Commissioners. **Chair Rogers** asked Mr. Gillespie what it would cost to provide the required radios. Mr. Gillespie responded that it would cost \$15,764. Inspector Lawhorn asked if the base unit would be at 1200 Buchanan. Mr. Gillespie responded that he was not sure; that he was thinking about moving again. Mr. Gillespie stated that he would like to challenge the complaints, because they were not true. Inspector Lawhorn asked if he had received them; Mr. Gillespie stated that he had not. Director McQuiston noted that these had been sent to Mr. Gillespie, but had been returned as undeliverable. He stated that part of maintaining a fixed place of business was that certified mail should be deliverable. He added that Mr. Gillespie's fax machine did not work, he did not have email, and certified letters mailed to his address had consistently been returned. He stated that when the company did not pay for the annual renewal, the only way to get Mr. Gillespie to respond was to shut his company out of the airport. Mr. Gillespie argued that he did receive mail delivered to his address, and that he had been doing so. Director McQuiston acknowledged that, beginning in August 2007, Mr. Gillespie had signed for receipt of certified mail; but that his file contained proof that fourteen certified mail items had been returned as undeliverable from May 2005 to July 2007. **Chair Rogers** asked Mr. Gillespie if he understood the necessity of receiving correspondence from the Commission. Mr. Gillespie denied there was a problem. Director McQuiston reiterated that the reason Mr. Gillespie had not received the complaint by drivers was that he did not sign for it when it was mailed to him.

Commissioner Jennifer Brundige asked how Mr. Gillespie would dispatch a call after he installed the two-way radios. Mr. Gillespie stated that he had sixteen permits, and that several of his drivers were students, operating only part-time. As a result, it would depend on whether he had any drivers available. He stated that, when it is busy downtown, drivers do not answer

radio calls. He stated that he frequently would have to refer callers to other companies because he has few drivers available at night. Inspector Lawhorn noted that Diamond was well represented after dark, both downtown and at the airport. Mr. Gillespie stated that he tried to call drivers on their cell phones, but they would not respond if they were busy.

Inspector Lawhorn asked if Diamond Taxi drivers reported when they came on shift, or when they came in or out of the airport. Mr. Gillespie stated that they had a rotation system at the airport, and were required to call him when they got back in line.

Chair Rogers asked Mr. Gillespie how much rent he paid for the 1200 Buchanan office. He stated that he paid \$75 to Shawn; he did not know his last name. She asked Mr. Gillespie if he would have all of the two-way radios installed by October 15. Mr. Gillespie answered that he would.

Commissioner Tom Turner moved to place Diamond Taxi on ninety days probation. Prior to the October 23 Commission meeting, Diamond Taxi would submit to staff inspections of its place of business and to verify installation of two-way radios; at the time of the inspection, Diamond Taxi would also be required to provide the Commission with a copy of the written lease for the place of business. **Commissioner Brundige** seconded, and the motion passed (3-0).

WRECKER DRIVER PERMIT APPLICATIONS:

Billy Hunter: Mr. Hunter failed to appear. **Commissioner Tom Turner** moved to disapprove his application. **Commissioner Kim Thompson** seconded, and the motion passed (3-0).

Timothy Fisher: Mr. Fisher failed to appear. **Commissioner Tom Turner** moved to disapprove his application. **Commissioner Kim Thompson** seconded, and the motion passed (3-0).

WRECKER DRIVER PERMIT AND WRECKER COMPANY LICENSE APPLICATIONS:

William Allen and Action Towing: Mr. Allen failed to appear. **Commissioner Tom Turner** moved to disapprove the applications. **Commissioner Kim Thompson** seconded, and the motion passed (3-0).

OTHER BUSINESS

There was no further business, and the meeting was adjourned.

ATTEST:

APPROVED:

Brian E. McQuiston
Director-Executive Secretary

Helen S. Rogers
Chair